

BEST AVAILABLE COPYMTGY0001-101
SERIAL NO.: 10/752,791**PATENT**
FILED: January 7, 2004**REMARKS**

Claims 1-30 are pending in the application and subject to restriction. Claims 8-30 ~~have~~ been canceled without prejudice. Claims 1 and 6 have been amended. Claims 31-42 have ~~been~~ added, support for which can be found throughout the specification. No new matter has ~~been~~ added.

The Examiner required Applicant to elect one of 12 allegedly patentably ~~distinct~~ inventions for examination. Group I, encompassing claims 1-6, is said to be "drawn to an isolated nucleic acid molecule that encodes an exon 3 deleted MnSOD, classified in class 536, subclass 23.1." Group II, encompassing claim 7, is said to be "drawn to a method to make a polypeptide, classified in class 435, subclass 69.1." Group III, encompassing claims 8 and 9, is said to be "drawn to an isolated polypeptide, classified in class 530, subclass 300." Group IV, encompassing claims 10 and 11, is said to be "drawn to an isolated antibody, classified in class 530, subclass 387.1." Group V, encompassing claim 12, is said to be drawn to an "isolated nucleic acid probe comprising SEQ ID NO: 3, classified in class 536, subclass 24.31." Group VI, encompassing claim 13, is said to be "drawn to a method that modulates the expression of a peptide...classified in class 435, subclass 4." Group VII, encompassing claim 14, is said to be "drawn to method that modulates at least one activity of a peptide of claims 1 or 2, classified in class 435, subclass 4." Group VIII, encompassing claims 15-18, is said to be "drawn to a method of diagnosing oxidative stress by binding an mRNA, classified in class 435, subclass 4." Group IX, encompassing claims 19-23, is said to be "drawn to method of diagnosing oxidative stress by binding a polypeptide, classified in class 435, subclass 4." Group X, encompassing claims 24-26, is said to be "drawn to a method of promoting death of a cell comprising modulating the level of nucleic acid classified in class 435, subclass 4." Group XI, encompassing claims 27-29, is said to be "drawn to a method of inhibiting death of a cell, classified in class 435, subclass 4." Group XII, encompassing claim 30, is said to be "drawn to a method of promoting death of a cell by exposing a cell to the polypeptide, classified in class 435, subclass 4." In the event Group I is elected, the Office further requires Applicant to elect a single sequence to be examined. Applicant respectfully traverses and request reconsideration of the Restriction Requirement.

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Applicant provisionally elects herein Group I. Pursuant to the Office's imposition of a restriction requirement in the event Group I is elected, Applicant elects SEQ ID NO: 1 to be examined.

Notwithstanding the foregoing, Applicant respectfully disagrees with the restriction requirement and asserts that the Office can examine multiple groups without an undue burden. For example, the Office has failed to state why Groups I and II cannot be examined together. The Office discussed how certain groups are unrelated, but the Office failed to state why Groups I and II are unrelated. Claim 7 (Group II) recites, "A method of producing a polypeptide, comprising the step of culturing a host cell transformed or transfected with a nucleic acid molecule of claim 1 or 2 under conditions in which the polypeptide encoded by said nucleic acid molecule is expressed." The Office has failed to show that the process of claim 7 can be practiced with another materially different other than the product as covered by claims 1 or 2 (or equivalents thereof). Furthermore, there would be no undue burden for the Office to examine Groups I and II together because to examine Group II would require searching the same sequences as those that are searched for Group I.

Accordingly, Applicant respectfully requests that Groups I and II be rejoined and examined together.

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Conclusion

The examination of the pending claims and passage to allowance are respectfully requested. An early Notice of Allowance is therefore earnestly solicited. Applicants invite the Examiner to contact the undersigned at (215) 665-6928 to clarify any unresolved issues raised by this response.

Respectfully submitted,



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Date: **March 9, 2005**
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